SINGAPORE REPORTS

SELVADURAI PALA KRISHNAN & PARTNERS v. FRANCIS ADRIAN & CO. PTE. LTD. & ANOR.

[O.C.J. (Chua J.) May 24, 1984]

[Singapore – Originating Summons No. 107 of 1984]

Contract – Sale of land – Conditional contract – Part of 10% deposit paid as stakeholders – Contract subject to approval of J.T.C. – Failure to pay balance of 10% deposit – Repudiation of contract and claiming refund of part deposit – Entitlement to part deposit.

The first defendants were the owners of No. 18, Sungei Kadut, Street 4, Singapore (the property). On September 22, 1983, the liquidator of the first defendants entered into a conditional contract for the sale of the property to the 2nd defendants at the price of $1,250,000.00. The plaintiffs acted for both the 1st and 2nd defendants in the sale and purchase of the property. On the contract being signed $50,000.00 being part of the 10% deposit was paid to the plaintiffs as stakeholders. The contract was subject to the approval of the Jurong Town Corporation (JTC) to the sale and purchase and to the 2nd defendants' application for use of the property for "manufacturing wooden container sleeves". It was also one of the terms of the contract that in the event the said approvals were not granted by December 8, 1983 then all moneys paid under the contract shall be refunded to the 2nd defendant without interest and neither party shall have any claim whatsoever against the other. The 2nd defendants were required under the contract to pay $75,000.00 being the balance of the 10% deposit by November 8, 1983 which was to be held by the plaintiffs until the aforesaid approvals had been obtained. The 2nd defendants failed to pay the sum of $75,000,00 on November 8, 1983. On December 23, 1983, the 2nd defendants (by their telex) alleged that the contract had already been terminated and claimed refund of the sum of $50,000.00. The plaintiffs commenced the present proceedings applying for relief by way of interpleader. The only question at issue was who was entitled to the sum of $50,000.00.

Held: (1) the evidence clearly showed that the delay in getting JTC's approval was due entirely to the 2nd defendants trying to obtain approval for the "storage of stuffed containers" (as distinct from "manufacturing wooden container sleeves") when it had been clear to them as early as October 12, 1983 that JTC would not approve the application;

(2) the 2nd defendants were in breach of contract when they repudiated the contract on December 23, 1983 and demanded the return of all moneys paid. The 2nd defendants were therefore not entitled to the release of the sum of $50,000.00 as it was forfeited. The sum of $50,000.00 should be released by the plaintiffs to the 1st defendants.

ORIGINATING SUMMONS.

S. Selvadurai for the plaintiffs.

Giam Chin Toon for the 1st defendants.
Manjit Singh for the 2nd defendants.

Cur. Adv. Vult.

Chua J.: The 1st Defendants were the owners of No. 18, Sungei Kadut, Street 4, Singapore ("the said property"). On September 22, 1983, the Liquidator of the 1st Defendants entered into a Sale and Purchase Agreement ("the Sale Agreement") to sell the said property to the 2nd Defendants for Dollars One Million and Two Hundred and Fifty Thousand. The Plaintiffs (a firm of Solicitors) acted for both the 1st and 2nd Defendants in the sale and purchase of the said property.

Pursuant to the terms of the Sale Agreement, the 2nd Defendants paid $50,000.00 being part of the 10% deposit to the Plaintiffs to hold as stakeholders.

The Sale Agreement contains, *inter alia*, the following provisions:–

(a) That the Date of Completion is December 8, 1983.

(b) The sale is subject to "The Singapore Law Society's Conditions of sale 1981" so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with any conditions or term therein.

(c) By Clause 1(a) of the Special Conditions it was agreed that "the sale is subject to the approval of Jurong Town Corporation (JTC) to the sale and purchase herein and to the Purchaser's application for the use of the premises for *manufacturing wooden container sleeves* (emphasis added). The Purchaser shall at its own cost and expense apply within seven (7) days from the date hereof to JTC for the said approvals. The Purchaser shall at its own cost and expense comply with all the conditions which may be imposed by the JTC in granting its approvals".

(d) By Clause 1(b) of the Special Conditions it was provided that "in the event that the said approvals are not granted by December 8, 1983 then all monies paid hereunder shall be refunded to the Purchaser without interest and neither party shall have any claim whatsoever against the other".

(e) By Clause 2 of the Special Conditions "The Purchaser shall pay to the Vendor the sum of Dollars Seventy-Five Thousand ($75,000.00) being the balance of the 10% deposit by November 8, 1983.

The 10% deposit shall be held by the Vendor's solicitors as stakeholders until the aforesaid approvals have been obtained".

The 2nd Defendants failed to pay the $75,000.00 due under Clause 2 of the Special Conditions.

On December 23, 1983, the 2nd Defendants

by their telex to the Plaintiffs alleged that the Sale Agreement had already terminated and claimed refund of the $50,000.00.

On December 27, 1983, the Plaintiffs discharged themselves from acting as solicitors for both parties.

On January 7, 1984, the Plaintiffs released the $50,000.00 to Messrs. Wee Swee Teow & Co. the new solicitors for the 1st Defendants to hold as stakeholders which the said firm did upon receipt of the said sum.

By their letter of January 26, 1984, to the Plaintiffs, Messrs. Manjit Darshan & Partners, the new solicitors for the 2nd Defendants, claimed that the $50,000.00 ought to have been released to the 2nd Defendants and that Messrs. Wee Swee Teow & Co. had refused to release the money to the 2nd Defendants and that they had instructions to commence legal proceedings against the Plaintiffs.

On February 10, 1984, Messrs. Wee Swee Teow & Co. forwarded to the Plaintiffs the $50,000.00 to enable the Plaintiffs to revert to the position as stakeholders and to interplead.

On February 14, 1984, the Plaintiffs took out this Originating Summons applying for relief by way of interpleader. The question at issue is who is entitled to the $50,000.00.

The 2nd Defendants' case is that by the date of completion on December 8, no approval was granted by JTC and therefore the stakeholding comes to an end and they are entitled to a refund of the $50,000.00.

Let us examine the manner in which the 2nd Defendants went about to get the approval of JTC and the events that took place.

On September 24, 1983, the Plaintiffs wrote to JTC seeking on behalf of the 1st Defendants approval for the sale and purchase of the said property and informing JTC that the 2nd Defendants would be submitting directly to JTC for approval to use the premises for manufacturing container sleeves.

The 2nd Defendants submitted their application to JTC by their letter of the September 23, 1983. It is not disputed that their application was for the use of the premises for manufacturing wooden container sleeves *and* for the storage of stuffed containers.

By letter of October 12, JTC requested the 2nd Defendants to furnish further details and asking the 2nd Defendants to "please also note that it is our current policy that we do not approve storage of stuffed containers at our industrial premises".

On November 8, 1983, the Plaintiffs on the instructions of the 1st Defendants informed the 2nd Defendants by telex that "the Vendors require you to abide to the Special Condition to submit your application to JTC for use of the premises for manufacturing wooden container sleeves only".

On November 17, 1983, the representatives of the 2nd Defendants and the 2nd Defendants' solicitor had a meeting with Miss Lim Yuen Ping of JTC. The minutes of the meeting kept by the 2nd Defendants' solicitor clearly showed that the 2nd Defendants were trying to obtain approval for storage of stuffed containers when it had been made clear to them that JTC would not approve the application. There was also indication by the 2nd Defendants that they wanted to pull out of the contract if they could not obtain approval for storage of stuffed containers.

On November 30, 1983, the Plaintiffs on the instructions of the 2nd Defendants sent a telex to JTC in these terms:

> "Pursuant to the meeting on November 17, 1983 between our clients, our Mr. Pala and your Ms Lim Yue Ping, we are writing to you on behalf of our clients to clarify the position vis-a-vis your current policy not to approve storage of stuffed containers at your industrial premises.
>
> Our clients stress that their application is basically for the manufacture of wooden container sleeves, and only as an after-sales service that our clients will at their customers' request load these container sleeves (bought by the customers from our clients) with the customers' goods such as machinery and textiles. Our clients feel that they have to be flexible to their customers' needs since this is a new industry. We hope you will take into account the aforesaid when considering our clients' application."

On December 2, 1983, the Plaintiffs on behalf of the 2nd Defendants sent a telex to JTC stating:—

> "We would stress that the purchasers want to purchase the premises for the manufacture of wooden container sleeves. If you have objection to their also providing the after-sales service (mentioned in our TLX) in the premises, the purchasers will therefore not provide that service in the pre-

mises. Essentially, the purchasers require the premises to manufacture. However, if you do agree to allow our clients to provide that service subject to compliance of certain terms and conditions, pls let us know what these terms and conditions are."

And requesting JTC to expedite the processing of the 2nd Defendants' application.

The 2nd Defendants were still persisting in their application to use the premises for the storage of stuffed containers and that was six days before the completion date.

On December 2, the 1st Defendants agreed to extend the date of completion on December 8 to December 30, 1983.

On December 12, 1983, the Plaintiffs informed the 2nd Defendants by telex of the 1st Defendants' agreement to extend the completion date to December 30, 1983. The telex says *(inter alia)*:

'The Liquidator has agreed to extend completion to 30.12.83. If u do not complete by then, u will hv another 21 days' grace but u will hv to pay daily interest of $308.21 to Liquidator. Such interest being ... at the rate of 10% per annum on 90% of the purchase price (Condition 8 of the Singapore Law Society's Conditions of Sale 1981). If u hv not finalised mortgage arrangements, pls do so immediately."

On December 23, 1983, the 2nd Defendants sent a telex to the Plaintiffs informing them that they will ensure payment of the $75,000.00 being balance of the 10% by January 4, 1984. The telex reads:—

"Person authorising payments will not be in office till Jan 3 '84. However will ensure payment will be made by Jan 4 '84."

On the same day, December 23, the 2nd Defendants sent a telex to the Plaintiffs in these terms:

"The Board of Directors has reviewed all the documents and they are puzzled at some aspects.

(1) Completion was scheduled for Dec 8, '83. The purchase was subjected to approval being obtained from JTC for the use of the premises. As at Dec 8 '83 and even up to the time of this telex JTC has not given approval for use. As such Clause 1B of the agreement shld hv come into effect. We note that there is no correspondence from u advising us of this point.

(2) This therefor means that the agreement is treated as terminated + all monies shld hv been returned to us.

(3) We do not understand why u hv in your TLX to us dd 12/12/83 informed us that that completion has been extended to 30/12/83. This has not been agreed to by the Company + we do not understand why u did not advise that this unilateral extension of time is improper unless accepted by us in writing.

(4) Ref in TLX dd 2/12/83, line 3, 4 + 5 of 2nd paragraph was not in the best interest of our Company.

(5) We therefor do not understand how we can be responsible for payment of interest when the agreement is terminated.

As to-date no approval has been given by JTC for the use. Kindly TLX our instruction to vendor that we are treating Clause 1B has hving been effective since 9/12/83. Pls arrange to return to us at once all monies forwarded to us."

The 2nd Defendants contend that they have not in any way authorised or instructed the Plaintiffs to agree to any extension of time for completion. They say that they were extremely concerned at the contents of the telex from the Plaintiffs informing them that the Liquidator had agreed to extend the completion date to December 30 and had immediately called the Plaintiffs and expressed their shock "at the state of events and to demand that he (the solicitor) protects our Company's rights," and at no time during the conversation were they informed that the Company's consent was essential for any proper extension of time. The minutes of the conversation kept by the Plaintiffs did not show that there was any discussion as regards the extension of the completion date. But the telex of the Plaintiffs to the 2nd Defendants of December 13 indicates that what the 2nd Defendants were concerned was the daily interest of $308.21 which the 2nd Defendants were told they had to pay to the Liquidator. The 2nd Defendants did not object to the extension of the completion date.

The Plaintiffs were acting for the 2nd Defendants and they had arranged on behalf of the 2nd Defendants for the completion date to be extended to December 30 because approval had not yet been obtained from JTC. I find that the extension date for completion had been extended to December 30 by consent.

The 2nd Defendants' case is that the Sale Agreement was a conditional contract in that "the sale is subject to the approval of Jurong Town Corporation ... to the Purchasers' application for the use of the premises for manufacturing wooden container sleeves".

They argued that this condition must be satisfied by the completion date which they said was December 8, as time was made of the essence of the contract. They say that they had done all

that was required of them to satisfy the contract *i.e.* to obtain JTC's approval to use the premises for manufacturing wooden container sleeves before the completion date and no JTC approval was forthcoming before the contractual completion date, December 8.

It is clear from the Sale Agreement that the time fixed for completion, December 8, had not been made of the essence of the contract. The 2nd Defendants had to obtain JTC's approval before the completion date and if no approval was forthcoming before the contractual completion date then at any reasonable date thereafter. The 2nd Defendants were under an obligation to take all reasonable steps to obtain such approval from JTC.

The evidence clearly shows that the delay in getting JTC's approval was due entirely to the 2nd Defendants trying to obtain approval for the storage of stuffed containers when it had been clear to them as early as October 12, 1983, that the JTC would not approve the application.

The 2nd Defendants are in breach of the Sales Agreement when they repudiated the contract on December 23, 1983 and demanded the return of all monies paid. The 2nd Defendants are consequently not entitled to the release of the said sum of $50,000 as it is forfeited.

I order that the $50,000 be released to the 1st Defendants. The costs of the Plaintiffs and of the 1st Defendants are to be paid by the 2nd Defendants.

Order accordingly.

Solicitors: *Selvadurai Pala Krishnan & Partners; Wee Swee Teow & Co.; Manjit Darshan & Partners.*

JOEL SALAYSAY v. MEDICAL LABORATORY (PTE.) LTD. & ANOR.

[O.C.J. (Chua J.) October 4, 1984]

[Singapore – Suit 1331 of 1979]

Professional Negligence – Reports on blood tests – Whether reports of 1st defendant wrong – Duty of Medical Laboratory and referring doctor – Damages.

Tort – Defamation – Reports on blood tests – Duty of Medical Laboratory and referring doctor – Publication – Defence of qualified privilege – Damages.

Medical Profession – Reports on blood tests – Duty of Medical Laboratory and referring doctor.

In 1978 the plaintiff, then a student, applied to the Canadian High Commission in Singapore for a student visa. He went to see Dr. B.K. Sen, the 2nd defendant, for medical examination. The 2nd defendant sent him to the 1st defendant for a VDRL blood test. The 1st defendant submitted a report dated May 2, 1978 to the 2nd defendant: "VDRL – Reactive (2 units) and FTA/ABS – Reactive." The plaintiff, on being told by the 2nd defendant that his blood was syphilitic, went to another laboratory (A.M. Lab.) for a blood test – VDRL (RPR). The result was negative. The 2nd defendant then asked the 1st defendant to do another test on the plaintiff. The results (PB 3) were the same: "VDRL: Reactive (2 units); FTA/ABS: Reactive." The plaintiff was told by the 2nd defendant that he was obliged to forward the report of the 1st defendant to the Canadian High Commission. A.M. Lab. sent a blood sample of the plaintiff for confirmation of their test results to the Department of Pathology, which reported: "NRT – Non-Reactive; FTA – Non-Reactive." The plaintiff was told by the 2nd defendant that he had informed the Canadian High Commission that the plaintiff "Has evidence of syphilis – serological". PB 3 was later confirmed by the Dept. of Pathology. Subsequently the plaintiff got a favourable report dated June 28, 1978 from the Middle Road Hospital: "VDRL – Non-Reactive: FTA/ABS – Non-Reactive". Eventually the plaintiff was granted the visa on July 18, 1978.

The plaintiff then sued the two defendants for damages for negligence and defamation. The plaintiff proceeded against the 1st defendant, the 2nd defendant having settled the claim for $15,000.

Held: (1) the 1st defendant was merely asked to do the blood test and report on it as it found it and do nothing more;

(2) it was the duty of the referring doctor, the 2nd defendant, to diagnose whether it was syphilis or a BFP reading after all the clinical assessments had been done. This duty did not extend to the 1st defendant. The plaintiff had failed to substantiate his allegation that the findings of the 1st defendant were wrong;

(3) the publication to the Canadian High Commission was not publication of what the 1st defendant said but rather the conclusions or diagnosis of the 2nd defendant and the use by him of the word "syphilis";

(4) there was neither recklessness nor malice which would defeat the defence of qualified privilege;

(5) the plaintiff's claim against the 1st defendant was therefore dismissed with costs.

CIVIL SUIT.

Miss Noorjahan Kassim for the plaintiff.

M.A. Valibhoy for the 1st defendant.

Cur. Adv. Vult.

Chua J. : The plaintiff claimed damages against the two defendants for negligence and defamation.